

Creativity Constrained: Comics and the Law

Marc H. Greenberg

Professor of Law and Co-Director, IP Law Center
Golden Gate University School of Law
mgreenberg@ggu.edu

This is a book about the intersection of creativity, art and the laws of the United States. While Article I, Section 8 of the U.S. Constitution offers protection and financial incentives to creators of art, other U.S. laws threaten and limit the creative process. These constraints hinder the entrepreneurial efforts of art-related businesses. The valuable role some art forms play in shaping social change is too important to allow this erosion of the Constitutional protections granted to creators of art.

While much has been written about creativity, art and the law, most scholars have approached this subject from a macro perspective, offering broadly focused discussions of art and law in general. This approach allows scholars to explore abstract theory, however it has limited value in assessing the effect of actual constraints on working creators.

This book focuses on one art form - comics, cartoons and graphic novels - as a example of how the constraints of law limit the creative process and entrepreneurial goals of artists, publishers and retailers in this genre. Through this specific focus the reader is offered real world stories of the impact the law has on creativity, and how those constraints can be ameliorated or even eliminated.

The comic art form is one of the most popular and influential forms of contemporary art - with tendrils that extend into a diverse range of cultural activities, including political cartoons in newspapers and books, graphic novels that are often the source material for motion pictures and television programs, and comic books and related merchandise. Throughout their history, and perhaps because of their popularity, comics have been the subject of repeated efforts to limit and censor their subject matter, distribution and sale.

The law has played a key role, in a variety of ways, in the imposition of these constraints. This book examines the history and legal issues involved in the cases, statutes and legislative actions which have imposed legal constraints on the creators, publishers, distributors and even readers of comics. The negative impact of these cases, statutes and laws on the creators of comics is analyzed, and proposals for how to limit this impact in the future are offered.

Since these constraints have been applied in a disparate variety of ways, the full extent of this misuse of the law has not been the subject of any popular or scholarly work, and the attention of the art and legal communities to this problem has been unfocused. It is to shed light on the true nature and extent of this issue, and to offer proposals for stemming this tide, that I decided to write this book.